

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

No. 15-CR-4268-JB

1. ANGEL DE LEON,)

2. JOE GALLEGOS,)

3. **EDWARD TROUP**,)

4. LEONARD LUJAN,)

5. BILLY GARCIA,)

6. EUGENE MARTINEZ,)

7. ALLEN PATTERSON,)

8. CHRISTOPHER CHAVEZ,)

9. **JAVIER ALONSO**,)

10. **ARTURO ARNULFO GARCIA**,)

11. BENJAMIN CLARK,)

12. RUBEN HERNANDEZ,)

13. JERRY ARMENTA,)

14. JERRY MONTOYA,)

15. MARIO RODRIGUEZ,)

16. TIMOTHY MARTINEZ,)

17. MAURICIO VARELA,)

18. DANIEL SANCHEZ,)

19. GERALD ARCHULETA,)

20. CONRAD VILLEGAS,)

21. ANTHONY BACA,)

22. ROBERT MARTINEZ,)

23. ROY MARTINEZ,)

24. CHRISTOPHER GARCIA,)

25. CARLOS HERRERA,)

26. RUDY PEREZ,)

27. ANDREW GALLEGOS,)

28. SANTOS GONZALEZ,)

29. PAUL RIVERA, and)

30. SHAUNA GUTIERREZ)

Defendants.

**RESPONSE OF CERTAIN COUNT 3 DEFENDANTS TO JOINT MOTION TO SEVER
DEFENDANTS CHARGED WITH OFFENSES IN COUNTS 6 AND 7 [Doc. 807]**

Defendants, Edward Troup, Javier Alonso and Arturo Arnulfo Garcia (the Count 3 defendants), through counsel, submit this Response to the Joint Motion to Sever Defendants Charged with Offenses in Counts 6 and 7 [Doc. 807] filed by defendants Jerry Montoya, Timothy Martinez, Anthony Ray Baca, Mauricio Varela, Daniel Sanchez, Carlos Herrera and Rudy Perez.

In this case thirty defendants are charged by Superseding Indictment with violations of 18 U.S.C. 1959(a) and 18 U.S.C. 2 – Violent Crimes in Aid of Racketeering. [Doc.368]. Defendants Edward Troup, Javier Alonso, Arturo Arnulfo Garcia, Benjamin Clark, and Ruben Hernandez are charged in Count 3 with the murder of Freddie Sanchez, alleged to have occurred on June 17, 2007. [Doc. 368, pp.15-18]. In Counts 6 and 7, defendants Jerry Montoya, Timothy Martinez, Anthony Ray Baca, Mauricio Varela, Daniel Sanchez, Carlos Herrera and Rudy Perez are charged with conspiracy to commit murder and murder of Javier Molina alleged to have occurred on March 7, 2014. [Doc. 368, pp.20-26].

The defendants charged in Counts 6 and 7 have moved to have those counts severed from the remaining counts alleged in the Superseding Indictment. [Doc. 807]. The defendants charged in Count 3 file this response to the Joint Motion to Sever Counts 6 and 7.

Although the government's theory is not entirely clear, it appears, based on the discovery produced to date, that the government's theory regarding Count 3 is that co-defendants Arturo Garcia and Benjamin Clark ordered that Freddie Sanchez be killed, that co-defendant Ruben Hernandez assisted in the homicide by covering security cameras, and that co-defendants Edward Troup and Javier Alonso killed Freddie Sanchez. It must be reiterated that this seems to be the government's theory; however, discovery has been produced which directly contradicts the government's presumed theory.

For the reasons and authorities articulated in the Joint Motion to Sever Counts 6 and 7, the Count 3 defendants join in that motion. Importantly, and as accurately argued in the Joint Motion to Sever Counts 6 and 7, although Counts 3, 6 and 7 are all alleged to have occurred within the New Mexico Department of Corrections, Count 3 is alleged to have occurred almost seven years before the events charged in Counts 6 and 7 and none of the defendants charged in Count 3 are charged in Counts 6 and 7. Furthermore, the government will perhaps argue that Count 3 should be joined with Counts 6 and 7 because all of the defendants charged in Counts 3, 6 and 7 are alleged members of the SNM. However, discovery reveals that prior to March 7, 2014 at least one of the Count 3 defendants (Javier Alonso) had renounced any association with the SNM and the other active Count 3 defendants (Edward Troup and Arturo Garcia) were not even in the custody of the New Mexico Department of Corrections on March 7,

2014.¹ Accordingly, the factor that allegedly unites the Count 3, 6 and 7 defendants, *i.e.* SNM membership and participation in alleged gang activity, was not present in March of 2014.

The Count 3 defendants agree that joinder of Counts 3, 6 and 7 will significantly complicate and lengthen any trial and that consideration of Federal Rules of Criminal Procedure 8 and 14 counsels in favor of severance. The Count 3 defendants adopt the arguments in the Joint Motion to Sever Counts 6 and 7 and accordingly join in the request to sever Counts 3, 6, and 7. The Count 3 defendants reserve the right to request further severance of the remaining counts and/or defendants and by this pleading merely assert that they specifically join in the Joint Motion to Sever Defendants Charged with Offenses in Counts 6 and 7 [Doc. 807]

Inasmuch as the government opposed the Joint Motion to Sever Counts 6 and 7 [Doc. 807, p.28], the Count 3 defendants assume that the government will persist in that opposition. Undersigned counsel attempted to confer with co-defendants Clark and Hernandez to determine their position regarding this motion. Counsel for co-defendant Clark indicated that they take no position. Counsel for co-defendant Hernandez did not respond.

¹ “Active Count 3 defendants” refers to those defendants charged in Count 3 who are actively defending against the charges alleged in the Superseding Indictment, *i.e.* Edward Troup, Javier Alonso, and Arturo Garcia. The other two defendants charged in Count 3, Ben Clark and Ruben Hernandez, are confirmed cooperators with the prosecution.

WHEREFORE, based on the foregoing it is respectfully requested that Counts 6 and 7 be severed from the remaining counts in the Superseding Indictment and in particular be severed from Count 3 of the Superseding Indictment.

DATED: January 6, 2017.

Respectfully submitted,

/s/ Cori Harbour-Valdez

Patrick Burke

Cori Harbour-Valdez

Attorneys for Edward Troup (3)

/s/ Nathan Chambers

Nathan Chambers

Noel Orquiz

Attorneys for Javier Alonso (9)

/s/ Billy Blackburn

Billy Blackburn

Attorney for Arturo Garcia (10)

CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2017, I presented the foregoing to the Clerk of the Court for filing and uploading to the CM/ECF system which will send notification of such filing to counsel of record.

/s/ Nathan Chambers

Nathan Chambers